IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1129 of 2000

Mayakrishnan .. Appellant/Accused

vs.

The Deputy Superintendent of Police,
Arakkonam, Vellore District,
(Thakkolam Police Sation
Cr.No.76/199) .. Respondent/Complainant

Prayer: This Appeal has been preferred against the judgment dated 30.10.2000, made in S.C.No.103 of 2000 on the file of the learned Sessions Judge, Vellore.

For Appellant : Mr.E.J.Ayyappan (Amicus Curiea)
For Respondent : Mr.V.R.Balasubramanian
Additional Public Prosecutor

ORDER

This appeal has been preferred against the judgment in S.C.No.103 of 2000 on the file of the Sessions Judge, Vellore.

2. The short facts of the prosecution case relevant for the purpose of deciding this appeal are as follows:-

On 8.11.1999 at about 6.30 pm when the complainant was waiting for her mother, who is collecting firewood near Ponniamman Koil pond situated at Mangattucheri village, the accused who does not belong to SC/ST community came there and under the pre-text of getting some answers from the complainant suddenly caught hold of her hand and closed her mouth and pulled her into a bush with an intention to outrage her modesty and forcibly molested her and in the course of the same transaction the accused bet the complainant on her hip with a stick causing simple injury.

3. The case was taken on file by the Sessions Judge and on appearance of the accused copies under Section 207 of Cr.P.C., were furnished to him and the charges under Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act and under Section 323 IPC were framed and when questioned, the accused pleaded not guilty.

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4. On the side of the prosecution P.W.1 to P.W.10 were examined and Ex.P.1 to Ex.P.8 were exhibited and M.O.1 was marked. P.W.1 and P.W.4 are sisters. P.W.3 is the mother of P.W.1.

5. P.W.1 would depose that on 8.11.1999 at about 4.00 pm the complainant P.W.1 along with Sagunthala, Gowdhami and Sangeetha, went to Ponniamman Koil pond for the purpose of collecting firewood. P.W.1 belongs to Hindu Adidravidar community and was studying in 6th standard. After collecting huge firewood, P.W.1 felt that it is very difficult to lift the firewood and on seeing P.W.2 who was returning after collecting firewood, P.W.1 requested her to inform her mother P.W.3 to go over to the spot where P.W.1 was waiting for the purpose of lifting the firewood. P.W.1 was waiting till 6.00 pm for the arrival of P.W.3. At that time the accused came and enquired her as to which place she hails from and P.W.1 had replied that she belongs to Mangattucheri Colony. The accused immediately caught hold of the hand of P.W.1 and pulled her into a bush after closing her mouth with his hand. The accused has also molested her by pressing the breast forcibly. When P.W.1 requested to leave, the accused bet her with M.O.1. In the meantime P.W.3 rushed to the spot and on seeing P.W.3, the accused ran away from the place of occurrence. P.W.1 had narrated what had happened to P.W.3. In the mean time P.W.1's uncle also came there. Since P.W.1 was complaining on pain over her breast and hip, she was taken to government hospital at Arakkonam by her mother for treatment. While P.W.1 was getting treatment at the hospital around 8.00 pm on the same day the Thakkolam police came their and recorded Ex.P.1-statement from P.W.1.

6. P.W.2-Gowdhami, who was studying 6th standard at the time of occurrence would corroborate the evidence of P.W.1 to the effect that on the date of occurrence she also accompanied P.W.1 to Ponniamman Koil pond for the purpose of collecting firewood and while she was returning after collecting firewood, she saw P.W.1 standing near the Ponniamman Koil with her huge collection of firewood and asked her (P.W.2) to inform her mother to go there since she alone could not lift the huge collection of firewood and accordingly she (P.W.2) had also informed the mother of P.W.1 what she was asked to convey by P.W.1. Immediately, the mother of P.W.1 proceeded to Ponniamman Temple where P.W.1 was standing. Later she came to know that the accused had outraged the modesty of P.W.1.

7. P.W.3 is the mother of P.W.1. She would depose what P.W.1 had narrated in Ex.P.1-complaint as well as in her deposition before the Court. But she would say that she saw the accused along with P.W.1 near the said temple and on seeing her, the accused ran away. She would further depose that she tried to secure the accused, but he ran away and P.W.1 was lying on the ground in a semi-conscious state and on her enquiry P.W.1 had revealed that the accused had outraged her modesty and she is having pain over her breast and hip and later she took P.W.1 to the government hospital at Arakkonam for treatment and that her

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daughter P.W.1 was admitted as an inpatient for about 25 days in the said government hospital.

8. P.W.4-Sagunthala is the eldest sister of P.W.1. She also accompanied P.W.1 on the date of occurrence to Ponniamman Temple pond for the purpose of collecting firewood and that P.W.1 had collected huge quantity of firewood and was waiting in the temple for her mother to lift the firewood. When her mother brought P.W.1 to the house she was also informed that P.W.1 was outraged by the accused and that since P.W.1 was crying out of pain, she was taken to the government hospital by her mother and uncle and that she also accompanied them.

9. P.W.5-Chithirai would state that on 8.11.1999 at about 6.00 or 6.30 pm while she was alone in her house, her brothers wife P.W.3 was informed by P.W.2-Gowdhami that P.W.1 is standing alone near the temple pond waiting for her mother to lift the huge collection of firewood and immediately P.W.3, the mother of P.W.1 left the house towards the place where P.W.1 is said to be waiting for her and that she also followed P.W.3 to the temple pond area where she saw the accused, on seeing P.W.3 ran away from the place of occurrence. She came to know from P.W.1 that the accused had outraged her modesty. She and P.W.4 took P.W.1 to government hospital at Arakkonam for treatment.

10. P.W.9 is the head constable, who after receiving the information through telephone from the government hospital at Arakkonam at 8.30 pm proceeded to the government hospital at about 9.30 pm on the same day and recorded a statement of P.W.1, who was admitted in the said hospital for treatment. Ex.P.1 is the complaint preferred by P.W.1. On the basis of the complaint, P.W.9 returned to the police station and registered a case under Thakollam Police station Cr.No.76 of 1999 under Section 354, 323 IPC and under Section 3(1)(x) of the SC/ST (Prevention of Atrocities) Act. Ex.P.7 is the FIR. He had forwarded the copies of Ex.P.7 to the concerned officials including the Judicial Magistrate.

11. P.W.10 is the Deputy Superintendent of Police, Anti Corruption Department, Vellore, who had investigated this case. After knowing that P.W.1 is admitted in Government Hospital at Arakkonam, he proceeded to the hospital and examined P.W.1 who was admitted in the said hospital as an inpatient and also P.W.3 & P.W.4 and one Devaraj and recorded their statements and proceeded to the place of occurrence and prepared Ex.P.2-observation mahazar in the presence of P.W.6 and recovered M.O.1 & 2. from the place of occurrence under Ex.P.3-mahazar. He has also drawn Ex.P.8 rough sketch.

12. P.W.8 is the Tahsildar of Arakkonam, who had issued Ex.P.5 community certificate to the accused who belongs to Hindu Vanniyar community.

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13. P.W.7 is the doctor, who had treated P.W.1 at the time when she was admitted in the government hospital at Arakkonam on 8.11.1999 at about 8.00 pm. P.W.7 would say that while he was treating P.W.1, P.W.1 has informed him that a known person has outraged her modesty on 8.11.1999 at about 6.30 pm. On examination, he could find i) a contusion measuring 5 inches x 3 inches on the left side of the hip ii) a small contusion measuring 2 x 1 cm on the left breast. iii) a contusion over the neck measuring 2 inches x 1 inch. He has also made arrangements for P.W.1 being examined by a lady doctor. The lady doctor Saroja on examination of P.W.1, informed that there is no injuries found on the private part of P.W.1. Ex.P.4 is the wound certificate issued by him.

14. After completing the investigation and after following the formalities, P.W.10 has filed the charge sheet against the accused on 5.12.1999.

15. After going through the oral and documentary evidence the learned trial judge held that the guilt against the accused under Section 3(1)(xi) of the SC/ST (Prevention of Atrocities) Act and under Section 323 IPC have been proved beyond any reasonable doubt and accordingly convicted and sentenced the accused to undergo one year RI and slapped a fine of Rs.1000/- with default sentence and the period from 9.11.1999 to 7.12.1999 of imprisonment the accused had already undergone was awarded as punishment under Section 323 IPC and the set off was ordered under Section 428 of Cr.P.C. Aggrieved by the findings of the learned trial judge, the accused has preferred this appeal.

16. Now the point for determination in this appeal is whether the conviction and sentence against the accused under Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act and under Section 323 IPC is liable to be set aside for the reasons stated in the memorandum of appeal?

17.The Point:- Heard the learned Amicus Curiea Thiru.E.J.Ayyappan and the learned Additional Public Prosecutor Mr.V.R.Balasubramanian and considered their submissions. The learned Amicus Curiea would submit that he would confine himself to the sentence part only and he would contend that the accused is a first offender and the accused is an youth of 20 years of age and only due to the age factor the accused had inadvertedly committed this offence and the same may be considered leniently. Heard the learned Additional Public Prosecutor in this point, who has no serious objection for the modification of the sentence. Under such circumstances, I am of the view that the imprisonment awarded under Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act can be modified to that of six months RI, the minimum sentence prescribed under the section, and in respect of fine the trial court findings will sustain. Point is answered accordingly.

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18. In fine, the appeal is dismissed with a modification in the sentence alone in the judgment in S.C.No.103 of 2000 on the file of the Principal Session Judge, Vellore. The accused is convicted and sentenced under Section 3(1)(xi) of SC/ST (Prevention of Atrocities) Act, to undergo six months RI instead of one year RI imposed by the trial Court. In other respect, the findings of the trial Court will sustain. The trial Court is directed to secure the accused to undergo the unexpended portion of the sentence. Set off granted under section 428 Cr.P.C.

ssv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Principal Sessions Judge, Vellore.

2.The Judicial Magistrate, Arakkonam.

3.-do- thro The Chief Judicial Magistrate, Vellore.

4.The Public Prosecutor, High Court, Madars.

5.The Deputy Superintendent of Police,
Arakkonam, Vellore.

SSV(CO)
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